

Decision -04-01-045 January 22, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mpower Communications Corp. (U-5859-C),

Complainant,

vs.

Pacific Bell Telephone Company (U-1001-C),

Defendant.

Case 02-09-045
(Filed September 27, 2002)

ORDER EXTENDING STATUTORY DEADLINE

We extend the deadline for resolving this adjudicatory proceeding. Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. The 12-month deadline for resolving this matter was September 27, 2003. For reasons discussed below, an extension is reasonable to accommodate issuance of the presiding officer's decision (POD) and any ensuing appeal or request for review.

Background

We held prehearing conferences (PHC) on November 26, 2002 and on February 19, 2003. Between the PHCs, Mpower Communications Corp. (Mpower) and Pacific Bell Telephone Company (Pacific) conducted discovery to determine whether there were disputed factual issues. Mpower determined

factual disputes existed, and this matter was set for hearing on April 23 and 24, 2002. By a March 12, 2003 letter, the parties requested an extension of the schedule in order to complete discovery and to better prepare for hearing or, alternatively, summary disposition of the issues in this proceeding. Hearings were rescheduled for June 11 and 12, 2003. Hearings were held on June 11, 2003. Opening briefs were filed on July 3, 2003, and reply briefs were filed on August 8, 2003.

On August 8, 2003, the parties contacted the assigned administrative law judge (ALJ) and requested that the Commission delay issuance of the POD to enable the parties to discuss settlement. Settlement discussions were delayed due to scheduling conflicts and on October 2, 2003, the parties requested in writing extension of this proceeding beyond the one-year statutory timeframe and extension of the timeframe within which the POD must issue. In December 2003, the assigned ALJ requested an update on the settlement negotiations and the parties stated that they had been unable to reach a settlement agreement. On December 18, 2003, the parties confirmed these discussions by electronic mail and requested that the POD issue.

Discussion

Because the statutory deadline has passed and this case has not yet concluded, this decision is issued to provide the findings required by § 1701.2(d). This case was not concluded within 12 months of initiation, first, to accommodate discovery, and second, to accommodate settlement negotiations, in both instances at the parties' request. We anticipate the POD will mail shortly.

Accordingly, we find that the 12-month deadline for processing this case pursuant to Pub. Util. Code § 1701.2(d) could not be met, and that an extension

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in the schedule will be required to allow for adequate time following issuance of the POD.

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable statutory deadline for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Janice Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. This proceeding was initiated on September 27, 2002.
2. The proceeding was submitted on August 8, 2003.
3. Based upon the 12-month statutory deadline, this proceeding must be resolved on or before September 27, 2003, unless this date is extended.
4. Mpower and Pacific Bell requested extension of the statutory deadline and the timeframe for completion of the POD on August 8 (orally) and on October 3, 2003 (in writing) in order to permit the parties to conduct settlement negotiations. Because the parties requested this delay, there was insufficient time to resolve this proceeding before the 12-month statutory deadline ran.
5. Mpower and Pacific Bell confirmed by electronic mail on December 18, 2003 that they were unable to reach a settlement agreement.
6. An extension is necessary to allow time for issuance of the POD and for Commission consideration of any appeal or request for review of the POD.
7. Public review and comment regarding today's decision should be waived.

Conclusions of Law

1. Pub. Util. Code § 1701.2(d) requires that adjudication cases be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.
2. The findings set forth above are sufficient to justify why the 12-month deadline could not be met.
3. The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately.

IT IS ORDERED that the 12-month statutory deadline in this proceeding is extended.

This order is effective today.

Dated January 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners